



**INCOME TAX ALERT**

N. A. SHAH  
**BULLETIN**

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## **Notification No. 33/2018**

### **Amendments in Form 3CD**

The Central Board of Direct Taxes ('CBDT') has expanded reporting of certain items in Form 3CD. Such amendment shall come into force from 20.08.2018. We have highlighted said changes in the ensuing paragraphs:

#### **1. General Anti-avoidance Rule**

Chapter X-A (Section 95 to 102) of the Act deals with applicability of General Anti-Avoidance Rule ('GAAR'). Under GAAR, tax authorities are empowered to deny tax benefit transactions or arrangements, which do not have any commercial substance or main purpose is to obtain tax benefit. GAAR provisions are applicable from AY 2018-19. The amended Form 3CD, requires tax auditor to report such transaction as under:

- Whether the assessee has entered into an impermissible avoidance arrangement
- If Yes, then the following additional information needs to be reported:
  - Nature of impermissible avoidance arrangement and
  - The amount of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement

#### **2. Goods and Service Tax ('GST')**

GST is introduced with effect from 1<sup>st</sup> July 2017. In the revised Form 3CD break-up of total expenditure in respect of entities registered under GST and not registered under GST is sought to be furnished in following format:

- Expenditure in respect of entities registered under GST
  - Relating to goods and services exempt from GST
  - Relating to entities falling under composition scheme
  - Relating to other registered entities
  - Total payment to registered entities
- Expenditure relating to entities not registered under GST

The above reporting is identical to the reporting requirement in 'Schedule GST' in ITR-6. Further, this reporting in Schedule GST of ITR Form is applicable only to those assesseees who are not liable to tax audit u/s 44AB of the Act.

### **3. Disclosure regarding secondary adjustment (Sec 92CE)**

Section 92CE deals with Secondary adjustments in certain cases. It provides that if primary adjustment to transfer price is made (e.g. suo moto by assessee or by Assessing Officer which is accepted or determined by advance pricing agreement or made as per the safe harbor rules), the assessee shall make secondary adjustment if the amount of primary adjustment exceed one crore rupees. Now in the amended Form 3CD following information is to be furnished:

- Whether primary adjustment to transfer price has been made during the previous year
- If yes, the clause u/s 92CE(1) under which it has been made as well as the amount
- Whether excess money available with Associated Enterprise ('AE') is required to be repatriated to India as per Sec 92CE(2)
- If yes, whether it has been repatriated within prescribed time and if no, the amount of imputed interest income on such excess money

### **4. Disclosure regarding interest deduction limitation (Sec 94B)**

Section 94B provides that an Indian company or permanent establishment of the foreign company, being the borrower, pays interest or similar consideration exceeding INR 1 crore in relation to debt/guarantee provided by its associated enterprise, the excess interest shall be disallowed. Excess interest means the amount of interest paid or payable in excess of 30% of EBITDA or the amount of interest paid or payable to AE, whichever is less. Now in the amended Form 3CD following information is to be furnished:

- Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding Rs.1 Crore
- If yes,
  - amount of expenditure by way of interest or of similar nature incurred,
  - EBITDA during the previous year,
  - amount of interest expenditure which exceeds 30% of EBITDA and
  - details of interest expenditure brought forward and carried forward as per Sec 94B(4)

## **5. Details of Country by Country Reporting**

Section 286 of the Act provides for furnishing of Country by Country Report ("CbCR") in respect of an international group whose consolidated group revenue exceeds Rs 5,500 crore. In the amended Form 3CD following information is to be furnished:

- Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity (Yes/ No)
- Name of parent entity, name of alternate reporting entity (if applicable) and date of furnishing of report

## **6. Details relating to Form 61, Form 61A or Form 61B**

Section 285BA of the Act (read with Rules 114E) requires certain assessee to provide information in relation to specified transactions in Form No. 61 (Statement containing particulars of declaration received in Form No. 60) or Form No. 61A [Statement of Financial Transactions ('SFT') by specified reporting persons] or Form No. 61B (Statement of Reportable Account by prescribed reporting financial institution as per Sec 285BA). In the amended Form 3CD following information is to be furnished:

- Whether the assessee is required to furnish statement in Form 61, Form 61A or Form 61B (Yes/ No)
- If yes, details of income-tax department reporting entity identification number, type of form, due date of for furnishing such form, actual date of furnishing (if furnished)
- Whether forms contain information about all details/ transactions which are required to be reported (Yes/ No)
- If No, list of all such transactions which are not reported in above forms

## **7. Details relating to income chargeable under Section 56(2)(ix)/ 56(2)(x)**

Any sum of money, which is received as an advance in the course of negotiations for transfer of capital assets, is forfeited because negotiations do not result into transfer of such capital assets is chargeable to tax under Section 56(2)(ix) of the Act. Similarly, Section 56(2)(x) of the Act provides that any asset received without consideration/ inadequate consideration shall be chargeable to tax in the hands of the recipient. In the amended Form 3CD following information is to be furnished:

- Whether any amount is to be included as income chargeable under the head 'income from other sources' as per Section 56(2)(ix)/ Section 56(2)(x) of the Act
- If yes, details of nature of income and amount thereof

#### **8. Details relating to Section 269ST**

According to Section 269ST, person receiving an amount of Rs 2 Lakhs or more in cash shall be liable to penalty of equivalent amount under Section 271DA of the Act.

In the amended Form 3CD following information is to be furnished:

- Particulars of receipts or payments made in cash or cheque or bank draft (not being account payee cheque or account payee bank draft) exceeding the limit specified in Sec. 269ST (which puts a limit of Rs. 2 lakh on Cash Transactions)
  - Name, address and PAN (if available with the assessee)
  - Nature of transaction
  - Amount and date

#### **9. Details in respect of TDS/ TCS returns**

Any person deducting tax or collecting tax needs to submit TDS/ TCS returns as per prescribed timeline provided in the Act. In the amended Form 3CD following information is to be furnished:

- Whether the assessee is required to furnish statement of tax deducted or tax collected
- If yes, details of TAN, type of form, due date for furnishing such form, actual date of furnishing (if furnished)
- Whether form contains information about all details/ transactions which are required to be reported (Yes/ No)
- If No, list of all such transactions which are not reported in above forms

#### **10. Details of deemed dividend [Sec 2(22)(e)]**

As per Section 2(22)(e) of the Act, any payment by a company, not being a company in which public are substantially interested (i.e. closely held company), of any sum (whether representing a part of the assets of the company or otherwise) by way of loan or advance to a shareholder holding not less than 10%

of the voting power or certain concern shall be treated as deemed dividend in the hands of such shareholder.

In the amended Form 3CD following information is to be furnished:

- Whether the assessee has received any amount in the nature of dividend as provided in Section 2(22)(e) (Yes/ No)
- If yes, details of amount and date of receipt

### **11. Details of Section 32AD**

As per Section 32AD of the Act, deduction of capital expenditure shall be allowed to person incurring such expenses subject to certain conditions as provided in the Act. The said section further provides that if the new asset is sold within a period of five years, the amount of deduction allowed in respect of such asset shall be deemed to be the income of the assessee in the year of sale.

In the amended Form 3CD, amount of deduction claimed and deemed profits is required to be reported.

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